IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 140 OF 1996

Sukhdeo Nagu Wadar (Kadam)]
Age 42 years, Occupation -]
Agriculture, Resident of Hatnur,]
Taluka - Tasgaon, Dist.-Sangli]...Appellant.
Versus.
The State of Maharashtra]...Respondent.

Mr. Sudatta J. Patil i/b. S.B. Shetye for the Appellant.
Mr. B.H. Mehta, APP for the State.

CORAM : S.K.Shah, J.
DATE : December 1, 2004.

ORAL JUDGMENT

. By this Appeal, the Appellant assails the Order of conviction and sentence, passed by the 2nd Additional Sessions Judge, Sangali, in Sessions Case No. 42 of 1994, whereby, the appellant was convicted of the offences punishable under Section 498-A and 306 of the Indian Penal and was sentenced to SI for one year and to pay a fine of Rs. 1000/-, in default to SI for three months on the first count and SI for three years and to pay a fine of Rs. 5000/-, in default to suffer SI for six months, on the second count.

2. Briefly stated, the case of the prosecution was that the deceased Shalan married to the appellant-accused somewhere in the year 1992. It was

the second marriage of both of them. The first husband of the deceased Shalan had deserted her. The marriage between the appellant and the deceased was performed as per the customs of their community, namely, Vadar Community, by wearing ornaments, garlands, having new clothes etc. but without performing any relegious ceremonies. This marriage was not disputed here although the legality of the marriage was tried to be disputed in the trial Court. The learned Counsel representing the appellant, however, does not raise any question with regard to the legality of the marriage having been taken place between the appellant and the deceased Shalan.

3. It is alleged that after the marriage, the deceased started cohabiting with the accused at village Hatnur. For about 5 to 6 months after the marriage, the deceased lived happily with the appellant. However, it is alleged by the prosecution that thereafter the accused started beating the deceased under the influence of liquor and also started demanding Rs. 20,000/-, asking the deceased to bring Rs. 10,000/- from her two brothers, namely, Eknath [PW 1] and Rama [PW 3], Rs.10,000/-each. It is alleged that about 15 days prior to the incident, she happened to go to her brothers house at Jaysingpur and made complaint about her beating and demand of money by the accused. However, the

brothers said, without any payment, that they would come and meet the accused. As such, the deceased alone went back to her husband. On 13.4.1993, the brothers of the deceased received information about the deceased having been seriously ill and was removed to Tasgaon. Therefore, they rushed to Tasgaon. Firstly, they went to Primary Health Centre at Tasgaon. There they got an information that after completing the post-mortem examination, the dead body of the deceased was removed to Tasgaon Police Station. Therefore, they went to Tasgaon Police Station. There, they were informed that the body is sent to Hatnur. Therefore, they went to Hatnur, which is about 15 kilometres away from Tasgaon. On reaching there, they found one Ambassador Car parked in front of the house of the accused. They found that the use of the car was being made for carrying the dead body and the dead body of Shalan was lying in the dicky of the car and the body was being carried for the purpose of funeral.

. Krishna [PW 1], the brother of the deceased, however, objected saying that he will not allow the cremation to be carried out. They came to know from the persons gathered there that the deceased committed suicide by hanging herself in the house of the accused. The police were also present at that time. With the help of PSI Savarde, the dead body was taken back to

Tasgaon Police Station by the said Ambassador Car. There, at the request of the brothers of the deceased, the body was handed over to them for being carried to Jaysingpur. The brothers carried the body to Jaysingpur and the last rites were performed.

. Eventually, before body was carried to Jaysingpur, Krishna [PW 1] lodged complaint at Tasgaon Police Station against the accused. The same was recorded at Tasgaon Police Station. In the meantime, the accused, having seen that the deceased had committed suicide in the house, about which he came to know early in the morning on 13.4.1993, went to Tasgaon Police Station and lodged the Report, which was recorded by Head Constable Jaywant Sanap [PW 6]. On the basis of which, accidental death was registered vide ADR No. 35 of 1993 under Section 174 of the Code of Criminal Procedure. On the same day, he forwarded the same to ASI Savarde [PW 5], who received it about 9.15 a.m. He visited the house of the accused alongwith the panchas and had drawn inquest over the dead body. Immediately thereafter, he sent the dead body for post-mortem examination. He also prepared the panchanama of the scene of offence [Exhibit-6]. The rope was found attached to the neck of the deceased. It was, thereafter, the dead body was taken back to the police station and then handed over to the brothers of the

deceased.

4. On the basis of the complaint [Exhibit -9] lodged by Krishna [PW 1], A.S.I. Savarde [PW 5], an offence came to be registered at C.R. No. 55 of 1992 under Section 498-A and 306 of the Indian Penal Code. The investigation was carried out, within which, as usual, the statements of the witnesses were recorded.

. On completion of the investigation, the Charge - sheet was filed in the Court of the Judicial Magistrate on 21.6.1992. The learned Magistrate committed the case to the Court of Sessions at Sangali as the offence was exclusively triable by the Court of Sessions.

5. Charge was framed against the accused by the trial Court. The accused pleaded not guilty to the charge and claimed to be tried. His defence was of total denial.

. The defence, as is brought in the cross - examination of the witnesses is to the effect that the accused’s first wife filed maintenance petition against him, however, as he was unable to pay any separate maintenance allowance to his first wife, he had decided to bring his first wife alongwith her three children to his house. Probably, the deceased got frustrated on

knowing the same and, therefore, she committed suicide. He, however, denied the allegations of ill-treatment of the deceased and demand of money, alleged to be fetched from her brothers.

6. At the trial, the evidence that was led by the prosecution, mainly consisted of two brothers of the deceased, namely, Eknath [PW 1] and Rama [PW 3], the complainant and Rajabai [PW 4], the neighbour of the brothers of the deceased, besides the evidence of Dr. Shashikant D. Patil [PW 2], who did autopsy on the dead body, Bhimrao Savarde [PW 5] who drew inquest panchanama and further investigation into the offence and Head Constable Jaywant Sanap [PW 6] who recorded the accidental death of the deceased.

7. The learned Additional sessions Judge, having considered the evidence as stated above, passed the aforesaid Order of conviction and sentence, which is assailed in this Appeal.

8. The learned Counsel representing the appellant submits that there is hardly any evidence to prove the alleged guilt of the appellant. The accused himself had gone to the police station to lodge the information about the accidental death of the deceased. He further submits that the deceased had written a letter to her

brother, which is at Exhibit 10. In that letter she did not make any complaint about the ill-treatment and demand of money, allegedly made by the accused.

. Under the circumstances, he submits that the Order of conviction and sentence passed by the learned Additional sessions Judge is erroneous and needs to be set aside.

. As against this, the learned Public Prosecutor fully supported the judgment of the trial Court.

10. I have been taken through the entire evidence. It is undisputed that the deceased had married to the appellant-accused, hardly 8 to 9 months prior to the incident. It is also an admitted position that for initial period of first 5 to 6 months, the deceased lived happily with the accused. The evidence of both the brothers of the deceased, namely Krishna [PW 1] and Rama [PW 3] shows that the deceased made complaint about the beating and demand of money by the accused only when she happened to visit their house, 15 days prior to the incident. Similar is the evidence of Rajabai [PW 4], the neighbour of the brothers of the deceased.

11. A letter is on record, at Exhibit 10, which was written by the deceased to her brothers, dated

15.12.1992 shows that there is no whisper about the beating or even about the demand of money, allegedly made by the accused. The tenor of the letter indicates that the accused used to go to attend the dates in a maintenance petition, he was not returning home for 2/3 days after the date. It further indicates that on coming back after attending the dates in the petition, the accused used to speak something lie about it. It further mentions that the accused had a desire to bring back his first wife. Therefore, a fear is mentioned in the letter that if the accused brings his first wife, the same thing would happen to her as happened earlier with her first husband. The letter requested the brothers to think over this aspect and take some steps. Thus, even in this letter the deceased had shown an apprehension that the accused had a desire of bringing back his first wife and children to his house and, if that happens, she would be most unhappy as she was with her first husband. What is pertinent to note is that there is no whisper about the ill-treatment meted out to her by the accused or the demand of Rs. 20,000/-, allegedly made by the accused from her brothers.

12. A perusal of the evidence of the neighbour of the brothers of the deceased, namely, Rajabai [PW 4], a contradiction is proved in her evidence to the effect that she stated before the police that when the deceased

made complaint to her on her visit, some 15 days prior to the incident, to Jaysingpur, the deceased told her that she had not disclosed about the ill-treatment and demand of money to her brothers. However, both the brothers have spoken about the same. Ofcourse, this contradiction has no force as both the brothers have spoken about the deceased having made complaint to them about the beating given to her by the accused and the accused's demand of money. There is no reason why the two brothers Krishna [PW 1] and Rama [PW 3] should speak falsely against the accused about the complaint made to them by the deceased against the accused. Therefore, it can be presumed that such a complaint was made by the deceased to her two brothers.

. The question is whether this evidence is sufficient to satisfy the requirements of the provisions of Sections 498-A as also the provisions under Section 306 of the Indian Penal Code.

. In the explanation to Section 498-A of the Indian Penal Code, the "cruelty" is defined as follows :-

> "(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the

woman :or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

As per the aforesaid clause (a), the wilful conduct must be of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to her life.

13. As discussed above, for initial period of 5 to 6 months after her marriage, the deceased lived happily with the accused. Even at the time, when she wrote a letter, dated 15.12.1992 [Exhibit 10], there was no complaint of beating or even about making demand of money. The incident had occurred on the night between 12th and 13th of April, 1993, when the deceased committed suicide. The complaint that was made by the deceased to her brothers was only once, that was at the time of her visit to the brothers' house, about 15 days prior to the incident. Thus, whatever the beating or demand of money that was allegedly made by the accused, could have been within the period of about 2.1/2 to 3

months, prior to the deceased's visit to her brothers, 15 days prior to the incident. It is material to note that the prosecution has not led any evidence of any neighbour of the accused, who could have known about the alleged beating etc. Therefore, the only evidence that was led by the prosecution was of two brothers and their neighbour, to whom the deceased had made complaint about the beating and demand of money.

14. The nature of beating was that the accused used to come drunk and used to beat the deceased. The requirement of clause (a) above, is that such conduct of beating must be of such a nature as would likely to drive the woman to commit suicide. The act in this context is of a woman of reasonable and normal nature and not of extreme nature. The evidence of the aforesaid three witnesses is only to the effect that the deceased told them that the accused was beating her in drunken condition and was pressing her to bring amount from her brothers, as he wanted to purchase a land adjacent to the locality, which was put up for sale. In view of this evidence and taking into consideration the period of hardly about 2.1/2 to 3 months, it is difficult to gather that the conduct of the accused in beating the deceased was of such a nature as would have driven the deceased to commit suicide. Even the requirement of the aforesaid clause (a) is not satisfied

by the aforesaid evidence.

15. So as to attract the prepondereance of probabilities, in the defence it is suggested that probably the deceased got frustrated, as a result of the accused having considered to bring back his first wife and three children to stay with him. ASI Savarde [PW 5] has stated that during the course of investigation it was transpired that the first wife and children of the accused were staying in the house of the accused, at the relevant time. That frustration of the deceased was also depicted in her letter dated 15.12.1992.

16. Under these circumstances, the aforesaid evidence is hardly sufficient to prove the ingredients of the provisions of Section 498-A of the Indian Penal Code.

17. The learned Trial Judge seems to have proceeded on the presumption that there was an illtreatment and the conduct of the accused as contemplated under Section 498-A of the Indian Penal Code, without giving consideration or even discussing as to what was the nature of the beating or demand that was made and how much was intensity of threat was there to her life and whether that was sufficient to satisfy the requirements of Section 498-A of the Indian Penal Code. The learned trial Judge has committed an error in jumping to the

conclusion about cruelty caused to the deceased and convicting the appellant of the offence punishable under Section 498-A of the Indian Penal Code.

18. As regards the offence under Section 306 of the Indian Penal Code is concerned, there is no evidence as to what had happened during the last 2 to 3 days, the deceased stayed with the accused, after coming back from her brothers house. The abatement requires some positive conduct on the part of the accused, immediately prior to the incident of suicide so that an inference can be drawn from that conduct that the deceased was driven to commit suicide. However, there is no evidence whatsoever of this nature on record. The learned trial Judge also did not consider this aspect in proper perspective and, thus, has committed an error in convicting the appellant of the offence under Section 306 of the I.P.C.

19. Under these circumstances, it has to be held that there is hardly any evidence to prove that the accused had committed offence either under Section 498-A or 306 of the Indian Penal Code. The Order of conviction and sentence passed against the appellant - accused by the learned Trial Judge is, therefore, erroneous and the same is required to be set aside. Hence, the Order. :-

O R D E R

1. The Appeal is allowed.

2. The Order of conviction and sentence passed against the Appellant-accused for offences punishable under Sections 498-A and 306 of the Indian Penal Code, is hereby set aside.

3. The accused is acquitted of both the charges levelled against him.

4. The bail bond shall stand cancelled.

5. Fine if paid, shall be refunded to the Appellant-accused.

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[S.K.Shah,J.]

Godbole

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 140 OF 1996

Date of Judgment :1-12-2004

For Approval and Signature :

The Honourable Mr. Justice S.K. Shah :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?

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Ibrahim

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

criminal appeal no. 245 OF 1996

Date of Judgment :30-11-2004

For Approval and Signature :

The Honourable Mr. Justice S.K. Shah :

1. Whether Reporters of Local Papers may be allowed to see the Judgment?

2. To be referred to the Reporters or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the Judgment should be sent to Nagpur, Goa and Aurangabad office?

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